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November 29, 1955

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CONCORD, N.H.

Burnham B. Davis, Esq.  
Bolduc Building  
Conway, New Hampshire

Re: Estate of Howard G. Eneakly

Dear Mr. Davis:

I have your letter of November 23, 1955, concerning the above-entitled estate. While I can certainly understand the basis of your position, it is my view that the property of the testator located in New Hampshire is taxable in its entire net value at the full local rate of 8½%.

The case, as I understand it, is of a New Jersey decedent who owned real estate in New Hampshire, the net valuation of which is \$10,500.00. By his will the testator left this, along with other property, to trustees for the benefit of religious institutions in New Jersey. That state accords certain tax benefits to property within its jurisdiction passing to or for the benefit of religious institutions.

Under our law (RSA 86:6) the real estate owned by a decedent is either taxable or it is not taxable. If taxable the rate is 8½%, and the amount assessed upon is the actual market value of the property. (RSA 86:40).

The real estate of a decedent is exempt from the tax of RSA 86 under certain circumstances. The largest class of exempt takers consists of the spouse and lineal relatives, including the adopted child, of the decedent. Again, the property passes tax-free if it go for the care of cemetery lots, or to a town or city for public purposes. The final exemption is with respect to property passing to or for the use of educational, religious, cemetery or other institutions, societies or associations of public charity.

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State of New Hampshire

OFFICE OF ATTORNEY-GENERAL

Samuel B. Davis, Esq.

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The last named exemption only applies, however, when the institution, society or association of public charity is in another state than New Hampshire; and then only if such other state either imposes no death or transfer tax of any kind or accords with respect to property within its jurisdiction passing to charities in New Hampshire the same tax exemption which New Hampshire grants to property passing to charities in such state.

Testing the circumstances you describe it appears, first, that the local property is passing to a charity outside New Hampshire. The next inquiry is whether the other state, New Jersey, imposes a death tax. The answer being yes, the bequest does not meet the qualifications required for freedom from the tax unless New Jersey:

"grant[s] an exemption similar to that hereby provided . . . in favor of property passing to charities in this state . . ." RSA 86:6.

Bearing in mind that our law grants a complete exemption from taxation in an unlimited amount, it is seen that New Jersey prescribes a complete exemption with respect to certain charities up to the amount of \$5,000.00, and that it taxes the excess over \$5,000.00 at a lower rate than that taxable generally, which rate is also lower than the New Hampshire rate.

New Jersey's treatment of property passing to New Hampshire charities is not, in my opinion, "similar" to that which we accord to property going to qualifying takers outside the state. The only kind of exemption New Hampshire can give - if it is to give any - is a complete exemption, not only with respect to rate but also with respect to the amount involved. The only kind of exemption which we would recognize as "similar" to that provided by RSA 86:6 is one which is likewise unlimited as to rate and as to amount.

In passing it seems hardly necessary to say that in my opinion we would not be authorized to tax any property at the rate of, say,  $3\frac{1}{2}\%$ , since as noted above, I believe that property is either taxable or not taxable with no varying middle ground.

I should be interested to have your comments.

Very truly yours,

Warren E. Waters  
Deputy Attorney General

WEW/sml

cc: Kenneth L. Cowan, Director  
Division of Inheritance Taxes

Council of State Governments